



CONNECTICUT

**TESTIMONY OF
NATIONAL FEDERATION OF INDEPENDENT BUSINESS (NFIB)
OPPOSING
HB-5237, AAC FAIR CHANCE EMPLOYMENT
BEFORE THE
LABOR & PUBLIC EMPLOYEES COMMITTEE
MARCH 3, 2016**

A non-profit, non-partisan organization founded in 1943, NFIB is Connecticut's and the nation's leading small-business association. In Connecticut, NFIB represents thousands of members and their employees. NFIB membership is scattered across the state and ranges from sophisticated high technology enterprises to "Main Street" small businesses to single-person "Mom & Pop" shops that operate in traditional ways. NFIB's mission is "To promote and protect the right of its members to own, operate, and grow their businesses." On behalf of those small- and independent- job-providers in our state, NFIB/Connecticut offers the following comments:

NFIB/Connecticut has significant concerns with HB-5237 and opposes the bill as currently drafted. While certainly well intentioned, this legislation would dramatically restrict the ability of small employers to have necessary and relevant information related to the criminal backgrounds of potential and even current employees. NFIB generally opposes blanket shielding of criminal histories because it puts an unfair burden on small business' ability to thoroughly screen applicants for employment. Legislation to shield relevant criminal histories also increases the potential for litigation by adding more risks and variables into the hiring process, potentially putting business, employees and customers at risk. In addition, this bill seemingly allows for a new cause of administrative and/or civil action against employers (lines 162-167), along with an excessive administrative penalty, but without considering any legal recourse *for* employers who may be put in a tenuous legal position as a result of limited information during the hiring process. This raises serious questions concerning potential liability for employers. If HB-5237 passes as currently drafted, Connecticut employers will no longer have access to valuable public records of often relevant criminal history information for prospective employees, putting their business, employees, and customers in jeopardy, and opening the door for potential liability claims. In addition, small business owners need information upfront and early in the hiring process and this is beneficial to all parties, especially job applicants.

The business community generally supports efforts to give people second chances. Small businesses, in particular, tend to have an especially good track record in this regard. But small business owners are much better positioned than the government to determine who to hire, how to hire, and they make those decisions based on many factors and their best judgment based on the totality of the applicant and the circumstances. In order for small business owners to continue to make informed hiring decisions, it is critical they retain access to relevant public records that document criminal histories of applicants or



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employees. As such, NFIB doesn't believe "Ban the Box" is good policy for all businesses and shouldn't be applied with a one size fits all mentality. It is important to note that most small businesses do not have a human resources and/or legal department. Small businesses are often family operations. Even where employees are not related by blood, small business employees are often considered family members to each other. The owners of such businesses require full information about prospective employees to ensure the continuation of the nature of such a business.

Regardless of the reason for conducting a criminal background check, it is also important to note that existing laws and regulations already prohibit discriminatory application and usage of selection procedures. Title VII, the federal EEOC and state CHRO all govern and enforce various antidiscrimination laws and procedures when it comes to issues of employment. NFIB believes that federal and state rules, along with the recently revised EEOC Criminal Check guidance for employers, can adequately protect individuals from discriminatory selection procedures.

Finally, concerns over workplace security and skyrocketing litigation costs have made pre-employment background checks an essential tool for many businesses – large and small. Even where not legally required, it is often best practice to conduct background checks for certain jobs and industries. For example, small businesses that are alarm & security systems companies, routinely screen their installers and monitors who have access to people's homes, businesses, and other valuable and security sensitive information.

The current legislation is lacking in numerous regards. As previously stated, it is a one-size-fits-all approach that makes no consideration for the unique nature of small businesses, their track record in this arena, or the ability of small employers without a human resources or legal department to keep on top of and properly comply with the difficult requirements of this legislation. The bill also does not take into account that if passed, small businesses owners who may operate in multiple parts of the state may have to comply with differing sets of laws in addition to state law and federal law, depending on what municipality they are working in. While the legislation currently has a "look back" period of between 2 to 5 years depending on the nature of the crime, these time frames are rather short and more significantly, it treats all felonies, for example, the same, without differentiation for the most violent or serious crimes. While the legislation may prohibit the use of criminal information from "solely" being "the basis" on which an employee does not hire an applicant, there seems to be no legal presumption that would protect employers in this regard from potential frivolous claims by rejected applicants. This legislation is also silent as to an employer's potential liability that could result from the scenario in which an applicant may voluntarily disclose the existence of a past criminal history.

Since small business owners are the ones placing the job ads, sifting through resumes and



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setting up and conducting interviews, they should be able to know from the beginning, and not after the fact, whether or not an applicant has a criminal or arrest history. If it turns out the candidate the small business owner wants to hire has a criminal conviction that makes them unfit for the job they're applying for, the hiring process has to start over again from the beginning. This is wasted time, which is wasted money for a small business, and it is also a waste of time for the applicant, which is unfair to that person as well.

In closing, NFIB/Connecticut would like to state that we encourage small employers to make individualized assessments during the hiring process and want there to be a fair hiring process for all parties involved. But hiring decisions are challenging and not without risk and we hope that lawmakers and proponents of this legislation keep that in mind. We appreciated the opportunity to dialogue with proponents of similar legislation last session and we look forward to possible opportunities this session to work with the proponents as well as the Chairs, Ranking Members, and other interested parties. For any questions or additional information, please contact Andy Markowski, NFIB/Connecticut State Director, at 860-248-NFIB. Thank you for the opportunity to comment and for your consideration of NFIB's concerns on behalf of small business regarding HB-5237 as currently drafted.